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No. _____

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1992

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ROSS R. WRIGHT, Petitioner,

v.

THE STATE OF INDIANA, Respondent.

_____

PETITION FOR A WRIT OF CERTIORARI TO THE INDIANA SUPREME COURT

_____

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QUESTION PRESENTED

I. Whether a per se State evidentiary rule, which absolutely prohibits any reference to a polygraph, violates a defendant's rights under the Confrontation Clause of the Sixth Amendment if he is prohibited from cross-examining a witness regarding any of the circumstances surrounding the administration of a polygraph when, at the time of the polygraph, the witness:

a. was a suspect;
b. was placed under extreme mental and emotional pressure;
c. believed the polygraph could detect lies;
d. believed the polygraph operator was attempting to "pin" the murder on her;

and upon being disconnected from the polygraph, the witness suddenly changed her story, implicating the defendant for the first time?

TABLE OF CONTENTS

Page

QUESTION PRESENTED 1

OPINIONS BELOW 4

JURISDICTION 4

CONSTITUTIONAL PROVISION INVOLVED 5

STATEMENT OF THE CASE 6

REASONS FOR GRANTING THE WRIT 8

a. Conflict between the Indiana Supreme Court and the 7th and 11th Circuit Courts of Appeal over a federal question.

b. Important question of federal law decided by the Indiana Supreme Court, which should be settled by the United States Supreme Court.

CONCLUSION 10

APPENDIX

a. Indiana Supreme Court Opinion in this case, Wright v. State, Dated June 24, 1992 ..... A-1

b. Trial Court Entry of Judgment of Conviction and Sentencing Order, Dated March 14, 1990 ..... A-12

c. Trial Court Entry of February 7, 1990 ..... A-15

d. Trial Court Docket Entry of January 9, 1990 ..... A-17

e. State's Motion in Limine A-18

f. Excerpt from Trial Transcript where Federal question sought to be reviewed was raised A-21

g. Excerpt from Ross Wright's Brief of Appellant where Federal question sought to be reviewed was raised A-23

TABLE OF AUTHORITIES

Page

Cases:

Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105 (1974) 9

Delaware v. Van Arsdall, 475 U.S. 676, 106 S.Ct. 1431 (1986) 10

Kentucky v. Stincer, 482 U.S. 735, 105 S.Ct. 2658 (1987) 9

United States v. Kampiles, 609 F.2d. 1233 (7th Cir. 1979) 8

United States v. Piccinonna, 885 F.2d 1529 (11th Cir. 1989) 8

Wright v. State, 593 N.E.2d 1192 (Ind. 1992) 8

Zupp v. State, 258 Ind. 625, 283 N.E.2d 540 (1972) 8

Page

Miscellaneous:

F. E. Reid & F. Inbau, Truth and Deception: The Polygraph ("Lie Detection") Technique (1977) 9

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1992

ROSS R. WRIGHT, Petitioner,

v.

THE STATE OF INDIANA, Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE INDIANA SUPREME COURT

The Petitioner Ross R. Wright respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Indiana Supreme Court, entered in the above-entitled proceeding on June 24, 1992.

OPINIONS BELOW

The opinion of the Indiana Supreme Court is reported at 593 N.E.2d 1192, and is reprinted in the appendix hereto, p. A-1, infra.

JURISDICTION

The judgment of the Indiana Supreme Court was entered on June 24, 1992, affirming petitioner's conviction dated March 14, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

CONSTITUTIONAL PROVISION INVOLVED

Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

STATEMENT OF THE CASE

A. Relevant Facts

On April 20, 1989, William Freeland was found murdered at his residence in New Palestine, Indiana. Eventually the victim's wife, Teresa Freeland, implicated the petitioner, Ross Wright and his brother, Stan, in the murder.

Ross Wright, together with his brother, were tried by a jury and found guilty of murder and conspiracy to commit murder. The trial court imposed a sentence of sixty (60) years for murder and fifty (50) years for conspiracy to commit murder. The sentences were ordered served consecutively for a total sentence of one hundred and ten (110) years. (R. 176-179, Appendix p. A-12).

During the investigation, Teresa Freeland was subjected to a four (4) hour interrogation at the police station in an 8' x 10' windowless room. (R. 4162, 4164). She was wired to a polygraph machine by being connected to two (2) numograph tubes above the chest and around the stomach, a blood pressure cuff on the left upper arm, and electrode plates around her fingers. (R. 4184). At first, she believed she could beat the machine and gave statements which did not incriminate either her or Ross Wright. (R. 3811, 4166). The polygraph operator placed serious mental and emotional pressure on her by repeatedly telling her that she was being deceitful and untruthful, which caused her to cry uncontrollably. (R. 3812, 3822, 5445-5446, 5449-5451, 5455-5456). She was told by the polygraph operator, as he leaned down on the table, "Your ass is going to be in a whole lot of trouble young lady if you don't tell me the complete truth now!" (R. 3814-3815). Teresa Freeland was lead to believe that she was not passing the polygraph test and believed that the polygraph operator was trying to "pin" the murder on her. (R. 3812, 3816-3817). It was only after these events and after being disconnected from the polygraph that she changed her story and first implicated Ross Wright. (R. 3817, 4195).

Ross Wright was never allowed to cross-examine Teresa Freeland about any of the circumstances surrounding her polygraph examination.

Teresa Freeland was the only witness to allege Ross Wright's involvement.

B. How The Federal Question Was Presented

Prior to trial the State filed a motion in limine seeking to exclude from evidence, among other things:

> Mention of polygraphs, lie-detectors, polygrams, PSE's, or any other truth detection device or instrumentality, including but not limited to offers or refusals to take, results, conclusions, cooperation or non-cooperation, of any Defendant or witness or anyone associated in any way with this case at any stage by any means, including but not limited to demonstrative non-evidence.

(R. 99, Appendix p. A-18).

The trial court granted the State's motion in limine. (R. 8, Appendix p. A-17). During cross-examination of Teresa Freeland, Wright moved to have the order in limine lifted to question Freeland about the circumstances surrounding her polygraph examination and the change in her story after its administration. (R. 3790-3797, 3803-3805, Appendix pp. A-21-A-22). Wright asserted that the trial court's refusal to lift the order in limine denied him his Sixth Amendment right to full and effective cross-examination. (R. 3803, Appendix p. A-22). The trial court denied Wright's request to lift the order in limine. (R. 141-142, Appendix pp. A-15-A-16). Wright again moved to lift the order in limine during the testimony of Stanley Large, a witness to the polygraph examination (R. 4213-4217). The trial court denied Wright's second request to lift the order in limine. (R. 4226).

Wright raised the issue of the denial of his Sixth Amendment right to cross-examine Freeland regarding the polygraph in his direct appeal to the Indiana Supreme Court as the fifth issue in his brief. (Appendix pp. A-23-A-24). The Indiana Supreme Court, in ruling against Wright on this issue, cited no Constitutional nor United States Supreme Court authority and reiterated the per se Indiana rule prohibiting any evidence of polygraph results. The Indiana Supreme Court further expanded this rule to prohibit any cross-examination regarding the circumstances surrounding the administration of a polygraph examination. (Appendix pp. A-2-A-3).

REASONS FOR GRANTING THE WRIT

A per se State evidentiary rule, which absolutely prohibits any reference to a polygraph, violates a defendant's rights under the Confrontation Clause of the Sixth Amendment if he is prohibited from cross-examining a witness regarding any of the circumstances surrounding the administration of a polygraph when at the time of the polygraph, the witness:

a. was a suspect;
b. was placed under extreme mental and emotional pressure;
c. believed the polygraph could detect lies;
d. believed the polygraph operator was attempting to "pin" the murder on her;

and upon being disconnected from the polygraph, the witness suddenly changed her story, implicating the defendant for the first time.

Historically, Indiana has followed a per se rule excluding all evidence of polygraph test results. Zupp v. State, 258 Ind. 625, 283 N.E. 2d 540 (1972). The Indiana Supreme Court's holding in this case, Wright v. State, 593 N.E.2d 1192 (Ind. 1992), affirmed and expanded this per se rule to prohibit any cross-examination regarding the circumstances surrounding the administration of a polygraph examination.

This rule, as expanded, conflicts with the holding of the Seventh Circuit Court of Appeals in United States v. Kampiles, 609 F.2d 1233 (7th Cir. 1979). This rule also directly conflicts with the en banc Eleventh Circuit Court of Appeals which held that polygraph evidence was admissible "when used to impeach or corroborate the testimony of a witness at trial." United States v. Piccinonna, 885 F.2d 1529, 1536 (11th Cir. 1989).

This conflict is particularly appropriate for the granting of the petition under Rule 10.1(b) when one considers the impact upon future cases involving this issue. Not only does the holding of the Indiana Supreme Court conflict with the decisions of other United States Courts of Appeal, it also allows a scenario wherein a federal defendant and a state defendant on trial in the same city in the state of Indiana would receive far different rights to confrontation under the Sixth Amendment when seeking to cross-examine a witness regarding the circumstances surrounding the administration of a polygraph examination.

The principles underlying the Sixth Amendment right to confrontation make this issue appropriate for review by this Court. Evidentiary rules prohibiting the use of polygraph evidence were created due to the

inherent unreliability of the results and not to abrogate the confrontation rights of an accused. Yet, given the expansive interpretation of the per se rule in Indiana, a defendant cannot cross-examine the state's main witness regarding any of the circumstances surrounding the administration of a polygraph exam. Thus, regardless of the examination results, the jury is completely precluded from any opportunity to determine whether the polygraph became a motivational catalyst for the witness to change her story and implicate the defendant for the first time.

Concerns over the accuracy of polygraph results should not preclude any inquiry into the impact of the test itself upon the witness who was subjected to it, especially since police agencies are using polygraph exams as a method to elicit statements and confessions rather than as a measure of truth, see generally F.E. Reid & F. Inbau, Truth and Deception: The Polygraph ("Lie Detection") Technique (1977). Assuming the results of the examination are precluded at trial, a defendant is nevertheless entitled to have a jury informed of the circumstances surrounding the administration of the polygraph. It is not here argued that the results of a polygraph examination should be admitted in evidence. However, the circumstances surrounding the polygraph examination should be allowed in evidence, especially, as in this case, where the witness suddenly changed her story and, for the first time, implicated the defendant only after she believed that she was not passing the polygraph test and that the polygraph operator was trying to "pin" the murder on her. (R.3816).

It is axiomatic that the Sixth Amendment guarantees a defendant the opportunity to full and effective cross-examination of a witness, including inquiry as to sleep or food deprivation, or other physical and mental abuses affecting the witness' statement. In cases where a polygraph is used as a tool of interrogation to bring about a change in the witness' story, a jury might reasonably find that the witness was motivated to implicate another, and exculpate herself. In this case the polygraph was used as a means of coercion and not a means of verifying truth or falsity. Clearly, such use is a proper subject of cross-examination and denying Wright the opportunity violated his right to confrontation under the Sixth Amendment.

Cross-examination is "the principle means by which the believability of a witness and the truth of his testimony are tested." Davis v. Alaska, 415 U.S. 308, 316, 94 S.Ct. 1105, 1110 (1974). The Confrontation Clause created "essentially a 'functional' right designed to promote reliability in the truth-finding functions of a criminal trial." Kentucky v. Stincer 482 U.S. 735, 737, 107 S.Ct. 2658 (1987). "Of particular relevance here, . . . the exposure of a witness' motivation in testifying is

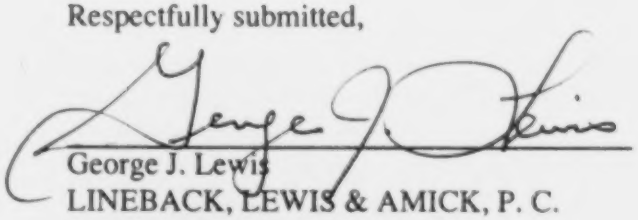
a proper and important function of the constitutionally protected right of cross-examination." Delaware v. Van Arsdall, 475 U.S. 676, 678-79, 106 S.Ct. 1431, 1435 (1986).

Prohibiting cross-examination concerning polygraphs frustrates and retards the ultimate purpose of the Confrontation Clause--that is, it fundamentally undermines the reliability of the truth-finding function of a criminal trial.

CONCLUSION

For these various reasons, this petition for certiorari should be granted.

Respectfully submitted,



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APPENDIX

APPENDIX a. Indiana Supreme Court Opinion
in this case, Wright v. State, Dated June 24, 1992
[pages A-1-A-11]

IN THE
INDIANA SUPREME COURT

ROSS R. WRIGHT, STANLEY C. WRIGHT	)	
Appellants,	)	
vs.	)	No. 30SOO-9006-CR-433
STATE OF INDIANA,	)	
Appellee.	)	

June 24, 1992

APPEAL FROM HANCOCK SUPERIOR COURT
The Honorable Richard T. Payne, Judge
Cause No. 3OD01-8905-CF-00015

GIVAN, J.

Appellants were tried by a jury and both were found guilty of murder and conspiracy to commit murder. The trial court sentenced each to a term of sixty (60) years for murder, and fifty (50) years for conspiracy to commit murder. The terms were to be served consecutively.

The facts are: On April 20, 1989, at 10:00 p.m., William Edward Freeland's wife, Teresa Freeland, found him murdered at their New Palestine residence. The coroner attributed the cause of death to stab wounds and blunt force injuries.

Officers took Teresa Freeland's statement and while attempting to verify her alibi discovered inconsistencies. On May 4, 1989, Freeland submitted to polygraph examinations during the course of which she confessed her involvement in the crime and implicated both appellants. Freeland planned her husband's death in order to inherit his estate and collect his life insurance. She stated she was having an affair with Stanley Wright. Freeland was to pay Ross Wright the sum of $10,000 for helping Stanley Wright murder her husband. She entered into a plea agreement with the State and testified against both appellants.

Appellant Stanley Wright claims the trial court erred by admitting into evidence gloves, a baseball bat, and a tire thumper seized from appellant's pickup truck shortly after his arrest. He contends the evidence was obtained without a valid search warrant. Stanley filed a pretrial motion to suppress based on the validity of the search. However, his only objection to the evidence at trial was based on relevance.

When the trial court denies a motion to suppress evidence or takes the motion under advisement, the moving party must renew his objection to admission of the evidence at trial. Morgan v. State (1981), Ind.App., 427 N.E.2d 1131. If the moving party does not object to the evidence at trial, then any error is waived. Id. Alleged error likewise is waived if an appellant states one ground at trial and later states another ground on appeal. Jester v. State (1990), Ind., 551 N.E.2d 840. Stanley's objections to the evidence are different; therefore, he has failed to properly preserve this issue on appeal.

Both appellants have raised the issue that the trial court committed reversible error by limiting cross-examination of Freeland about the circumstances surrounding her confession. The State filed a motion in limine which was granted by the trial court prohibiting reference to the polygraph examinations or questioning of Freeland regarding the circumstances of her polygraph examinations. Freeland testified against both appellants and her confession was used against them at trial. Both appellants claim that this limitation impinged upon their ability to challenge Freeland's credibility through cross-examination, as guaranteed by the Sixth Amendment, regarding motive or bias.

Granting of a motion in limine by the trial court is not a final ruling upon the admissibility of evidence. Sharp v. State (1989), Ind. 534 N.E.2d 708, cert. denied (1990), 494 U.S. 1031, 110 S.Ct. 1481, 108 L.Ed.2d 617. The purpose of the ruling is to prevent presentation of the potentially prejudicial evidence until the trial court can rule on the admissibility of the evidence in the trial context. id.

The harm claimed by both appellants is that they were unable to cross-examine concerning the circumstances leading up to Freeland's confession. Clearly, reference to the fact that a party or a witness has taken a polygraph examination is inadmissible. Hall v. State (1987), Ind., 514 N.E.2d 1265. The trial court has no discretion to admit evidence absent a proper waive or stipulation entered into by both parties. Smith v. State (1989), Ind., 547 N.E.2d 817. There was no such agreement between the parties in the present case.

The record reveals that both appellants were allowed to question Freeland regarding the changes in her story to the police, the amount of time she spent at the police station being questioned by the officers, the

of stress she experienced during questioning, and whether she to lie to protect herself and appellants. Freeland also was cross- d fully regarding her plea agreement with the State. When the came up at trial, counsel referred to the examination process as interviews.

A fair trial requires a full, adequate, and effective cross-examination. McKinley v. State (1984), Ind.App., 465 N.E.2d 742. A party must be afforded the opportunity to fully cross-examine witnesses, and should not be unduly limited by the court. Mengon v. State (1987), Ind., 505 N.E.2d 788. However, collateral and prejudicial matters are properly excluded from the scope of cross-examination. Stonebraker v. State (1987), Ind., 505 N.E.2d 55.

In the present case, appellants were able to examine Freeland regarding any undue influence exercised by the police prior to her confession and any motive or bias she might have to implicate appellants in the commission of the crimes without making reference to prejudicial matters. We fail to see how appellants were harmed by the limitation selected by the trial court. The trial court did not abuse its discretion.

Appellant Stanley Wright's final argument is that the trial court committed reversible error by denying his motion for discharge pursuant to Ind. Crim. Rule 4(B)(1) of the Indiana Rules of Criminal Procedure.

On May 5, 1989, Stanley moved for an early trial and the trial court set the cause for trial on June 12, 1989. One June 5, 1989, the State filed a motion for continuance which was granted by the trial court. The cause was reset for trial on July 10, 1989. On the day scheduled for trial, Stanley filed a motion for continuance which was granted by the trial court.

On July 13, 1989, Stanley filed a demand for commencement of trial, or in the alternative, discharge pursuant to Crim. Rule 4, and stated his preparedness to go to trial on July 14, or the week of July 17, 1989. The trial court denied Stanley's demand on July 17, 1989, and set the cause for trial on August 30, 1989. On August 15, Stanley again moved for discharge. Trial commenced on September 5, 1989.

The purpose of a motion for speedy trial made pursuant to Crim. Rule 4(B)(1) is served when the defendant makes the motion and the trial court takes action by setting the cause for trial. Dixon v. State (1982), Ind., 437 N.E.2d 1318. If the defendant causes a delay, as in the case at bar, he must file a motion requesting the immediate commencement of trial in order to invoke his rights under the rule. Id. Stanley accurately states that he did just that in the present case.

The seventy day time period would have expired on Friday, July 14, 1989. However, Stanley concedes he caused a delay of at least one day through his motion for continuance. On Monday, July 17, 1989, the trial

court denied Stanley's trial demand and request for discharge and set the cause for trial on August 30, 1989.

Stanley argues that he did not acquiesce to the later trial date and relies on his previous immediate trial demand to support that argument. He further states that the parties were not present when the trial court reset the trial date. However, a defendant must object at the earliest opportunity when his trial is set beyond the time limitations of Crim. Rule 4. Fry v. State (1988), Ind., 521 N.E.2d 1302. If an objection is not timely made, the defendant is deemed to have acquiesced to the later trial date. Decker v. State (1988), Ind., 528 N.E.2d 1119. Stanley waited nearly a month before filing an objection to the later trial date. Therefore, it was reasonable to assume that he had abandoned his request for a speedy trial. The trial court did not err in denying his motion for discharge.

Appellant, Ross Wright, claims that the trial court erred by granting the State's motion for mistrial. Ross argues that there was no manifest necessity for the mistrial and that he was subjected to former jeopardy when he was brought to trial a second time on the same charges.

The first trial began on September 5, 1989. During his opening statement, counsel for Stanley Wright stated to the jury that Freeland had failed polygraph examinations, and two posters were displayed in the courtroom both of which referred to Freeland's polygraph examinations. One of the posters was entitled "Why Teresa Freeland Is A Liar." The other poster contained references to the actual polygraph examinations. The State moved for a mistrial which ultimately was granted by the trial court. Counsel for Ross objected to the State's motion for mistrial.

The determination to grant a mistrial is within the trial court's discretion and great deference is accorded the trial court on appeal since is in the best position to gauge the circumstances and the probable impact on the jury. Hall v. State, (1987), Ind., 514 N.E.2d 1265. Further, the trial court has the authority to declare a mistrial where a manifest necessity for the mistrial exists. Patterson v. State, (1986), Ind., 495 N.E.2d 714. Reversal of the trial court's determination will be required only after an abuse of discretion has been established. Id.

In the case at bar, defense counsel referred to Freeland's polygraph examination which clearly was in admissible absent a waiver or stipulation between the parties. Hall, supra. We have held that once inadmissible testimony is interjected, the trial court has a duty to evaluate the situation to determine the damage done by reference to that subject matter. Patterson, supra. The trial judge in the present case polled the jury to determine which of them had read the objectionable posters. Most of the jurors had seen at least some portion of the posters.

The United States Supreme Court held in Arizona v. Washington

(1978), 434 U.S. 497, 98 S. Ct. 824, 54 L. Ed.2d 717, that when defense counsel makes an improper comment in his opening statement in a criminal trial, the trial court has several remedial measures at its disposal. The trial court may instruct the jury to disregard the improper comment. The trial court may choose to discipline counsel or remove him from trial. The court further noted that unless defense counsel are to be accorded an unfair advantage, the trial court should also have the power to declare a mistrial if that remedy is appropriate.

Jeopardy attaches in a criminal case once selection of the jury and alternates is complete and the panel has been sworn. Livingston v. State (1989), Ind., 544 N.E.2d 1364. Ross correctly states that if the trial court, without the consent of the defendant, discharges the jury to whom the cause has been submitted before a verdict has been reached, without the existence of some great necessity requiring such action, then such action serves as an acquittal of the defendant of those charges and exempts him from reprosecution for the offenses charged. Maddox v. State (1951) 230 Ind. 92, 102 N.E.2d 225. The question here is whether the trial court was correct in its determination that a manifest necessity for granting the mistrial existed.

The cases cited by Ross in support of his argument that the trial court should have admonished the jury after the improper reference to the polygraph examination instead of declaring a mistrial are distinguishable from the case at bar. In the present case, the defense deliberately put before the jury statements and exhibits referring to Freeland's polygraph examination during opening statement. The cases cited by appellant uphold a trial court's choice of admonishment as a proper remedial measure, but those cases involve the inadvertent volunteering of the fact a polygraph was taken, or invitation of that testimony by the party claiming prejudice from the denial of that party's own motion for mistrial on appeal. See e.g., Carter v. State (1987), Ind., 512 N.E.2d 158; Beal v. State (1983), Ind., 453 N.E.2d 190; Music v. State (1983), Ind., 448 N.E.2d 1082; Dawson v. State (1975), 163 Ind. App. 493, 324 N.E.2d 839.

The trial court was in the best position to determine the necessity for a mistrial, and that determination will be afforded great deference by this Court upon review. White v. State (1984), Ind., 460 N.E.2d 132. Although it was not Ross Wright's counsel whose conduct precipitated the granting of the mistrial, his counsel joined in the objection to the motion for mistrial. Neither party in a criminal case has the right to have the case decided by a jury which may be tainted by bias. Arizona v. Washington, supra. In light of the conduct of counsel in referring to the inadmissible polygraph evidence in his opening statement and deliber-

ately attempting to call attention to this evidence, we see no abuse of discretion in the trial court's decision to grant the mistrial.

Next Ross raises several issues regarding the amendment of the second count against him, Conspiracy to Commit Murder. First, he argues that the trial court committed reversible error when it permitted the State to file an Amended Count II Information and dismissed the original count because it subjected him to reprosecution for a charge dismissed after jeopardy had attached.

After the trial court declared a mistrial, the matter was reset for trial to commence on October 23, 1989. The second trial began on January 8, 1990 and concluded on January 15, 1990. During the interim between the mistrial and the second trial, the State sought to file an amended conspiracy count against appellant and requested a hearing. The trial court granted the State's request over Ross' objection.

Ross is correct in his statement that once the jury was impanelled and sworn, jeopardy attached in the first trial. Livingston, supra. However, there was a manifest necessity for granting the motion for mistrial and resetting the cause for trial at a later date. Filing of the amended count and dismissal of the original count occurred after the first panel of jurors had been discharged. Therefore, the jeopardy question and the propriety of the amendment procedure are two separate inquiries. We have already addressed the former jeopardy issue in regard to the necessity for the mistrial.

Ross argues that filing the Amended Count II later than 30 days prior to the omnibus date violated Ind. Code § 35-34-1-5(b) because it substantially altered the theory of the prosecution and subjected him to substantial prejudice.

An information may not be amended to change the theory of the case or the identity of the offense charged. Ind. Code § 35-34-1-5(a)(9); Sharp, supra. However, an information may be amended at any time to cure a defect if the substantial rights of the defendant are not prejudiced. Cornett v. State, (1989), Ind., 536 N.E.2d 501. Before the amendment is permitted, the trial court is required to give the parties adequate notice of the proposed amendment and an opportunity to be heard. Ind. Code § 35-34-1-5(d). If the trial court permits the amendment, then the trial court shall order a continuance, if one is requested by the defendant, in order to provide him with an opportunity to prepare his defense. Id.

On September 28, the trial court set the motion for a pretrial conference on October 5. On that day, Ross filed a response. The hearing was held, and the court took the matter under advisement. The State's request was granted on October 12 and the trial started on January 8, 1990.

The amended count charging appellant with Conspiracy to Commit Murder stated that appellant had committed five overt acts in the furtherance of the conspiracy to murder the victim, including the act of murdering the victim. The amendment did not change the identity of the offense. The defenses available to appellant against the original information were available against the amended information. Therefore, applying the aforementioned standard, the trial court did not err in permitting the amendment of the information.

Ross' final challenge regarding the filing of Amended Count II is that in its amended form the information raises an impermissible Bruton situation. In Bruton v. United States (1968), 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476, the United State Supreme Court reversed Bruton's conviction in a joint trial because his Sixth Amendment right to cross-examine witnesses testifying against him was violated when his codefendant's confession which implicated Bruton was admitted in evidence and the codefendant did not testify at trial.

In the present case, appellant's codefendant did not testify at the joint trial, but conflicting statements made by the codefendant to the police were introduced in evidence. The Amended Count II Information differed from the original Court II Information in that it charged each conspirator with specific overt acts in furtherance of the conspiracy. He argues that the State benefitted from the amendment in that his conviction for conspiracy was secured by imputation through proof of an overt act on his codefendant's part, and that he was unable to cross-examine the codefendant regarding the statements.

The present case differs from the situation in Bruton in that Ross is not directly implicated in the conspiracy via admission of his codefendant's statements. Those statements prove that the codefendant gave conflicting stories to the police as to the conspiracy. However, because Ind. Code §35-41-5-2(b) provides that the State meets its burden of proof of the conspiracy against any conspirator when it shows that either of them acted in furtherance of the conspiracy, the State could prove its case against Ross by imputing the act of the co-defendant to him.

Ross argues that he was denied his right of confrontation because his codefendant did not testify. The Sixth Amendment of the United State Constitution guarantees the right of confrontation in all criminal cases. However, we have held that the right of confrontation is not absolute. Miller v. State (1987), Ind., 517 N.E.2d 64. See also, Mattox v. United States (1895), 156 U.S. 237, 15 S.Ct. 337, 39 L.Ed. 409.

In addition, we have held that a denial of the right of confrontation can be harmless error where there is evidence supporting the conviction that is so convincing that the jury could not properly find otherwise.

Brewster v. State (1983), Ind., 450 N.E.2d 507. Applying that standard to the present case, admission of the statements made by Stanley in evidence if erroneous, was harmless. The State presented the testimony of Teresa Freeland which directly implicated both appellants in the commission of the crime and detailed their part in the conspiracy to commit the crime. Admission of the statements was cumulative evidence of the conspiracy. We have held that the admission of cumulative evidence alone is not grounds for reversal. Miller v. State (1989), Ind., 541 N.E.2d 260. The trial court did not commit reversible error.

Ross argues that the trial court committed reversible error when it admitted in evidence a knife and knife sheath which were recovered from appellant's bedroom.

A warrant was issued for Ross' arrest. Officers arrested him outside his residence pursuant to that warrant on May 5, 1989. They then obtained the written consent of appellant's roommate to enter the premises and conduct a search. While the officers were in the hallway, one officer observed a knife sheath in Ross' bedroom. The officer seized the knife and knife sheath, which were later introduced into evidence at trial.

Ross attacks the admission of those pieces of evidence on several grounds, each of which he claims is reversible error. He argues that the State did not prove that his roommate could give a valid consent to search either his home or room. He argues that the State failed to prove that exigent circumstances existed which would justify the warrantless search. He also contends that the evidence is inadmissible under either the plain view or open view doctrines. Further, he argues that the trial court was in error when it placed the burden of proving the unlawfulness of the search upon him.

Generally, a search warrant is a prerequisite to a constitutionally proper search and seizure. Stallings v. State (1987), Ind., 508 N.E.2d 550. However, a valid consent to search obviates the warrant requirement. Morgan v. State (1989), Ind., 544 N.E.2d 143. Consent to a search which is given by a third-party having common authority or a sufficient relationship to the premises to be searched is sufficient to justify a warrantless search. United States v. Matlock (1974), 415 U.S. 164, 94 S.Ct. 988, 39 L.Ed.2d. 242; Brooks v. State (1986), Ind., 497 N.E.2d 210. Moreover, evidence which is in plain view is not seized as a product of a search. Morgan, supra.

Upon review of the trial court's determination regarding the validity of a search, this Court will consider the evidence favorable to the ruling.

The State presented evidence during the hearing on Ross' motion to suppress which supported the admission of the knife and knife sheath

under the theory that the officers had valid consent to search from Ross' roommate and that the evidence was then discovered in plain view. From the hallway, an officer observed the knife sheath containing the knife in plain view on top of a dresser in Ross' room. The officer testified that he was aware that the victim had been stabbed with a knife and that there was a warrant for Ross' arrest.

Ross argued that he had exclusive control of his room; therefore, his roommate could not consent to the search of the room. However, as the trial court found, the roommate's consent permitted the officers to lawfully search the common areas of the residence from which the officers could see the knife sheath in plain view on the dresser. We see no error in the trial court's admission of this evidence under those circumstances. Moreover, we see no error in the State's failure to present evidence of exigent circumstances.

Ross' argument that the trial court erred by placing the burden of proving the unlawfulness of the search on the defendant is without merit. The trial court properly placed the burden of proving the validity of the warrantless search upon the State. The State argued that the search was valid, based upon the roommate's consent and plain view. Ross then argued that the search did not fit within those exceptions to the warrant requirement. We see no error here.

Ross' final argument is that the trial court erred by allowing in evidence both a tape and transcript of a telephone conversation between Teresa Freeland and him which occurred after Freeland had given her confession. He contends that his Sixth amendment right to counsel attached after the warrant for his arrest was obtained, and that he was prejudiced by the admission of the evidence because he was not advised of his right to counsel.

We have held that the Sixth Amendment right to counsel attaches only at or after the time that adversary judicial proceedings have been initiated against a defendant. Little v. State (1985), Ind., 475 N.E.2d 677. Adversarial proceedings against a defendant commence by way of filing a formal charge, indictment, information or arraignment. Heffner v. State (1988), Ind., 530 N.E.2d 297; Ind. Code § 35-34-1-1. The trial court did not err as Ross' right to counsel had not yet attached.

Further, Ross was not in custody; therefore, the conversation was not a custodial interrogation, and Miranda safeguards likewise did not apply to the situation. Pasco v. State (1990), Ind., 563 N.E.2d 587.

The trial court is affirmed.

Shepard, C.J., Dickson and Krahulik, JJ., concur.

DeBruler, J., dissents with separate opinion.

IN THE
INDIANA SUPREME COURT

ROSS R. WRIGHT,	)	
STANLEY C. WRIGHT	)	
	)	
Appellants,	)	
	)	
vs.	)	No. 30S00-9006-CR-433
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

June 24, 1992

APPEAL FROM HANCOCK SUPERIOR COURT
The Honorable Richard T. Payne, Judge
Cause No. 30D01-8905-CF-00015

DeBruler, J., dissenting.

The State is correct in its contention that absent a waiver or stipulation between the parties, even the mention that a party or witness has taken a polygraph examination is not admissible. However, the reasons for this rule of evidence are that the test is not sufficiently accurate to permit its admission and there is fear the jury will give undue weight to the validity of the polygraph test. Hall v. State (1987), Ind. 514 N.E.2d 1265. In the circumstances of this case the reasons for operation of the rule are not present. Here, the main prosecution witness was subjected to a three and one half hour interrogation. At first she was attached to a polygraph machine and gave statements which did not at all incriminate her or appellants. The interrogator repeatedly told her that was being deceitful and untruthful, which caused her to cry uncontrollably. She was led to believe she was flunking the test and that the officers were attempting to "pin" the murder on her. After this type of serious emotional and mental pressure she implicated appellants in the murder of her husband. The polygraph was used as a tool of interrogation which brought about the change of story by the witness. Properly viewed, the polygraph was used as a means of coercion and not a means of verifying truth or falsity. These convictions rest in large measure upon the

testimony of this witness, and the court's refusal to permit defense questioning of her about the police use of the polygraph in questioning her and getting her to change her story, was an undue restriction upon the right to cross-examine her. For this reason alone, these convictions should be reversed.

A further ground for reversal of the conviction of Ross Wright exists. When defense counsel argued before the jury in opening statement that the aforementioned chief witness for the State had failed a polygraph test, no manifest necessity for declaring a mistrial was created. The admonition given at first by the trial judge when he denied the State's mistrial motion was more than enough to cure any error. The later trial court order declaring a mistrial referred only to "harm which is potential" and does not satisfy the "manifest necessity" doctrine. This resulting reprosecution of appellant Ross Wright was in contravention of the Constitutional protection against double jeopardy. Arizona v. Washington, 434 U.S. 497, 98 S.Ct. 824, 54 L.Ed.2d 717 (1978). I would order him discharged and appellant Stanley C. Wright retried.

APPENDIX b. Entry of Judgment of Conviction,
Sentencing Hearing and Sentencing Order, Dated March 14, 1990
[pages A-12-A-14]

STATE OF INDIANA	)	IN THE HANCOCK SUPERIOR COURT
	) SS:	
COUNTY OF HANCOCK	)	1990 CALENDAR TERM
STATE OF INDIANA	)	
	)	
-VS-	)	CAUSE NO. 30D01-8905-CF-15
	)	
ROSS R. WRIGHT	)	

March 14, 1990

ENTRY OF JUDGMENT OF CONVICTION,
SENTENCING HEARING AND SENTENCING ORDER

Comes now the State of Indiana by Larry Amick and Dan Marshall, Deputy prosecuting Attorneys. Comes now the Defendant, Ross R. Wright, in person and by counsel, Stephen Gray. The jury in this cause having returned its verdicts finding the Defendant guilty of the offenses of Murder, a felony, as charged in Count I, and Conspiracy, a Class A felony, as charged in Amended Count II the Court now therefore enters Judgment on such jury verdicts. The Court therefore now FINDS, ADJUDGES and DECREES that the Defendant, Ross R. Wright, is guilty of Murder, a felony, as charged in Count I in violation of I.C. 35-42-1-1 and Conspiracy, a Class A felony, as charged in Amended Count II in violation of I.C. 35-41-5-2.

This matter is now submitted for Sentencing hearing. The Defendant waives the filing of a Pre-Sentence Memorandum and advises the Court that he has read the Pre-Sentence Report. Defendant's explanations and/or corrections to the report are now stated for the record. The Court therefore finds Defendant's age to be 38 years and that he was born on January 3, 1952. The Court further finds that the Defendant has been in custody 313 days during the pendency of this cause to and including this date which shall be credited against his sentence in this cause.

The State of Indiana now presents evidence with respect to sentencing and completes the same and rests. The Court advises the Defendant that it will take Judicial notice of all prior testimony in the trial of this cause. Defendant, Ross R. Wright, rests. Argument is now presented by counsel for the State of Indiana and the Defendant with respect to the issue of sentencing.

The Court now addresses Mark Freeland, the designated representative of the victim's family, who advises the Court that he has no further statement to make beyond the testimony previously given this date.

The Court is now addressed by the Defendant in person and is further advised by the Defendant that he knows of no legal reason why sentence should not be pronounced.

In determining an appropriate sentence for the Defendant the Court is required to, and has, considered the factors contained in I.C. 35-38-1-7. The Court now FINDS, ADJUDGES and DECREES that the Defendant's crimes in this cause are aggravated as follows:

1. The Defendant is in need of correctional or rehabilitative treatment which can be best provided by commitment to a penal facility.
2. Imposition of a reduced sentence would depreciate the seriousness of the offenses.
3. The Defendant committed the murder of William Edward Freeland while lying in wait.
4. The Defendant's actions in this cause were motivated in part by desire for personal gain.
5. The Defendant has a history of criminal activity as follows:
   (a) A conviction for Operating While Intoxicated, a Class A Misdemeanor, on March 3, 1984, in the Henry County Court under Cause Number 33E01-CM-29183,
   (b) A conviction for Operating While Intoxicated, as a Class A Misdemeanor, on January 3, 1986, in Marion County, Municipal Court,
   (c) Conviction for Operating while Intoxicated with a Prior Conviction, as a Class D felony, in the Marion County Municipal Court on February 20, 1987.

The Court further FINDS, ADJUDGES and DECREES that there are no mitigating circumstances with respect to the issue of sentence determination.

The Court therefore FINDS, ADJUDGES and DECREES that the factors constituting aggravation outweigh those constituting mitigation

in this cause and justify imposition of an enhanced sentence in this matter. In this cause an enhanced sentence may be either an additional period of imprisonment beyond the presumptive sentences authorized by statute and/or imposition of consecutive sentencing.

The Court therefore now FINDS, ADJUDGES and DECREES that the Defendant, Ross R. Wright, be sentenced in this cause as follows:

1. Count I, Murder, a felony, sixty (60) years;
2. Amended Count II, Conspiracy, a Class A felony, fifty (50) years.

The Court further FINDS, ADJUDGES and DECREES that the sentences shall be served consecutively to one another.

The costs of this action are assessed against the Defendant and the Sheriff of Hancock County is ordered to execute the sentence by delivering the Defendant to the custody of the Indiana Department of Corrections at the Reception Diagnostic Center located in Plainfield, Indiana.

The Court now advises the Defendant pursuant to Criminal Rule 11 of the Indiana Rules of Criminal Procedure. Defendant now advises the Court of his desire to appeal his conviction and sentence in this cause and the Court therefore directs trial counsel to consult with the Defendant and any appellate counsel for Defendant with respect to the action to be taken with respect to the appeal. The Defendant is now interrogated by the Court with regard to his financial ability to hire counsel for the appeal. The Defendant now advises the Court of his inability to secure private counsel and makes a disclosure of his assets. The Court now preliminarily determines the Defendant to be entitled to pauper counsel for the purpose of appeal but directs counsel to submit to the Court a Verified Asset and Debt Statement for the Court's consideration.

All of which is FOUND, ADJUDGED, ORDERED and DECREED by the Court this 14th day of March, 1990.

_____

RICHARD T. PAYNE, JUDGE
HANCOCK SUPERIOR COURT

APPENDIX c. Trial Court Entry of February 7, 1990
[pages A-15-A-16]

STATE OF INDIANA	)	IN THE HANCOCK SUPERIOR
	)	COURT
	) SS:	
COUNTY OF HANCOCK	)	1990 CALENDAR TERM
STATE OF INDIANA	)	
	)	
VS.	)	CAUSE NOS:
	)	30D01-8905-CF-15
	)	30D01-8905-CF-16
ROSS R. WRIGHT	)	
STANLEY C. WRIGHT	)	

TRIAL ENTRY OF FEBRUARY 7, 1990

Comes now the State of Indiana by Larry Amick and Dan Marshall, Deputy Prosecuting Attorneys. Come now the Defendants in person and by counsel, Richard Schrieber and Stephen Gray. Out of the presence of the jury the State now moves for an Order in Limine with respect to incidents occurring prior to 1978 referred to in Deposition as a possible blackmail and additionally as to sexual activity of Teresa Freeland prior to February, 1985. Argument heard. Motion in Limine granted in its entirety. Defendant, Stanley Wright, moves to publish the depositions of Teresa Freeland taken July 10, 1989 and September 15, 1989. Motion granted with the parties agreeing to such action even though the deponent's signature has not been notarized and all change sheets have not been signed.

The jury is returned into open Court and the State of Indiana resumes the presentation of its evidence. Out of the presence of the jury the Defendant, Ross Wright, moves to lift the Order in Limine with respect to paragraph 7 of the State's motion. Argument heard. Motion sustained as prayed. The parties now agree to the lifting of the Order in Limine in its entirety with respect to paragraph 7. Agreement approved by the Court and the Order in Limine with respect to paragraph 7 is now lifted in its entirety. The jury is returned into open Court and the State of Indiana's presentation of evidence is resumed. Out of the presence of the jury the Defendant, Ross Wright, moves to lift the Order in Limine with respect to paragraph 1 relating to polygraph evidence. Argument heard.

Motion denied. Defendant, Stanley Wright, now moves to lift the Order in Limine with respect to paragraph 1 relating to polygraph evidence. Evidence is presented. Argument is heard. Motion denied. To the extent that such motions contitute offers of proof by the Defendants the Court now rejects the same.

The jury is now returned into open Court and the State of Indiana resumes the presentation of its evidence. The time for adjournment having been reached the trial of this cause is continued to February 8, 1990 at 9:00 A.M.

Dated this 7th day of February, 1990.

RICHARD T. PAYNE, JUDGE
HANCOCK SUPERIOR COURT

APPENDIX d. Trial Court Docket Entry of January 9, 1990
[page A-17]

DOCKET ENTRY FOR CASE #30D01-8905-CF-00015
STATE VS. ROSS R. WRIGHT

FILING DATE: 1/9/90

The Court being duly advised in the premises now overrules the Motion To Dismiss filed by Defendant Ross Wright on January 8, 1990. The Court reaffirms its rulings heretofore entered on August 29, 1989 with respect to Defendant Ross Wright's First and Second Motions To Suppress and Defendant's Motion In Limine. Accordingly the First Motion To Suppress is sustained, the Second Motion To Suppress is overruled and the Motion In Limine is overruled. The Court further reaffirms its previous rulings with respect to the Motions of Defendant Stanley Wright renewed during the hearing on January 8, 1990. The Court now sustains the Motion In Limine filed by the State of Indiana on October 5, 1989 with respect to rhetorical paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 10 and 11. The Motion In Limine is overruled with respect to rhetorical paragraphs 9, and 12. The Court therefore orders that counsel for all sides and witnesses shall not be questioned nor bring before the prospective jurors or the jury any of the material the subject of any of the paragraphs to which the Court has sustained the Motion In Limine until leaves been received from the Court following a hearing conducted out of the presence of the jury.

STATE OF INDIANA	)	HANCOCK SUPERIOR
	)	COURT
	) SS:	
COUNTY OF HANCOCK	)	CALENDAR TERM 1989
		CAUSE NO.
		30D01-8905-CF015
		30D01-8905-CF016

STATE OF INDIANA	)
	)
VS.	)
	)
ROSS R. WRIGHT	)
STANLEY C. WRIGHT	)

MOTION IN LIMINE

Comes now the State of Indiana, by and through Deputy Prosecuting Attorney, Larry G. Amick, and respectfully moves the Court to enter an Order in Limine prohibiting any attorney from mentioning, eliciting mention of or referring to, directly or indirectly, at any stage of these proceedings before a jury or potential jurors, without first seeking and obtaining Court permission at a hearing outside the presence of jurors or potential jurors, any of the following:

1. Mention of polygraphs, lie-detectors, polygrams, PSE's or any other truth detection device or instrumentality, including but not limited to offers or refusals to take, results, conclusions, cooperation or non-cooperation, of any Defendant or witness or anyone associated in any way with this case at any stage by any means, including but not limited to demonstrative non-evidence.

2. Display before the jury or potential jurors of any demonstrative physical objects, writings, dolls, posters, tablets, charts, drawings, photographs, etc., until and unless they become evidence in this case. Alternatively, the State requests that the parties be required to submit any such non-evidentiary material for in-camera, ex-parte inspection to avoid placing improper material before a jury or potential jurors.

3. Mention before the jury or potential jurors of any supposed or alleged "spousal murder syndrome" by means of alleged expert testimony or otherwise, until and unless in a hearing outside the presence of the jury or potential jurors a sufficient basis for its admissibility is shown, including but not limited to prior acknowledgement and acceptance of

such alleged expertise by the Indiana Court of Appeals and Indiana Supreme Court.

4. Mention before the jury or potential jurors at any time in any way of conduct, statement, testimony, physical evidence or demonstrative non-evidence relating to the fact of, reason for, or basis of the termination of the proceeding by mistrial.

5. Mention before the jury of potential jurors of the death penalty, directly or indirectly, unless and until anyone is charged with a capital offense.

6. Mention before the jury or potential jurors of sentencing alternatives, "good" time, potential penalties for crimes never charged, or other irrelevant and improper sentencing information, not directly related to potential penalties for charged offences of witnesses who may have received a plea negotiation, or charges which may have been filed legally against such a witness and which were part of the negotiation process.

7. Speculation as to whether any witness may or may not inherit, receive insurance proceeds, or receive any future monetary or legal benefit the receipt of which is contingent upon future legal proceedings.

8. Speculation as to the legal validity of any antenuptial or prenuptial agreement or Will, except for the personal understanding of validity or terms which may have formed the basis for action by any witness.

9. Sexual activity of any person or witness prior to a time frame relevant to this case, being the date of marriage of William Edward Freeland and Teresa A. Freeland, or at least prohibiting such testimony, evidence, or mention from a time prior to the meeting of William Edward Freeland and Teresa A. Freeland.

10. Speculation or mention in any way as to motivation of police or prosecutors to file charges or engage in plea negotiations.

11. Speculation, testimony, evidence or mention as to alleged involuntariness or other legal invalidity of statements or physical evidence of Teresa A. Freeland or any other person as to whose statements, searches, or seizures the Defendants have no standing to object.

12. Mention before the jury or potential jurors of any matter or material prohibited from mention, display, introduction, or admission by the statutory or case law of the State of Indiana, the Indiana Rules of Court, including but not limited to the Indiana Trial Rules and Indiana Criminal Rules, the Rules of Professional Conduct, or other applicable law, regulation, rule or requirement.

WHEREFORE, the State of Indiana respectfully requests the Court enter an Order in Limine as herinabove set forth.

Respectfully submitted,

_____

Larry G. Amick
(Deputy) Prosecuting Attorney
18th Judicial Circuit
State of Indiana

CERTIFICATE OF SERVICE

I certify that on the 5th day of October 1989, service of a true and complete copy of the above foregoing pleading or paper was made upon said party or attorney of record herein, _____

By _____
Larry G. Amick

EXCERPT FROM TRIAL TRANSCRIPT WHERE FEDERAL QUESTION SOUGHT TO BE REVIEWED WAS RAISED FEBRUARY 7, 1990

THE FOLLOWING PROCEEDINGS WERE HELD OUTSIDE THE PRESENCE OF THE JURY

BY MR. GRAY: Your Honor, on behalf of Ross Wright I am at this time going to respectfully request that the Court lift or modify it's Motion In Limine paragraph one filed by the State of Indiana on October 5th, 1989 in which the Court has prohibited me from inquiring of any witness the mention of any polygraph, lie detectors, polygrams or any other truth detection device or instrumentality including but not limited to offers or refusals to take, results, conclusions, cooperation or non-cooperation of any Defendant or witness or any one associated in any way with this case at any stage, by any means including but not limited to demonstrative non evidence. I am not asking the Court to lift paragraph one in its entirety but I'm asking it to modify it with the following regard; I would like permission and leave of the Court to inquire of this witness the circumstances under which she was interrogated by Ern Hudson and Stan Large of the Boone County Sheriff's Department at the request of Hancock County Authorities. As a factual basis for my offer to prove I would now adopt as that factual basis the previously published deposition of Teresa Ann Freeland taken by Richard Schrieber on September the 15th, 1989. It is my contention and belief that I should be allowed to inquire into the circumstances under which Teresa Freeland changed her story from one of no involvement of my client in any kind of criminal activity to involvement in this conspiracy. I believe that the jury should be entitled to hear whether or not the circumstances surrounding the change in her stories were coercive, whether or not it was the free and voluntary statement of the witness, or if in fact it was a coerced involuntary statement not for the purposes of the Court rendering that testimony inadmissible or that statement inadmissible but for the jury to be able to weigh the credibility which they want to give it and the weight that they want to assign it . Certainly it seems to me that if a statement is illicited from a witness under threats or physical force or fully charged stun guns or night sticks or whatever, that they certainly is relevant evidence for the jury's consideration to the weight or credibility that they want to give a paticular statement. It seems to me that it is no less relevant and in many incidences no less coercive for a person to be hooked up and have wires attached to their body and have ropes and straps and to be kept confined in a small room with uh you know, deprived of other things that that has

just as much a coercive nature about it as all those other things that I've indicated to the Court. And - you know, the purpose of the offer again is not to try to have that statement suppressed, because I don't have standing to do that, but I think that the jury has the right to know the full circumstances under which Teresa Freeland became motivated to change her story that she had repeatedly maintained for many days after the murder of her husband and to try to shift blame to somebody else. If I were permitted to inquire with respect to this area in front of the jury it is my belief that I could prove that she was repeatedly told by the polygraph examiners that she was lying, that they knew that she was lying, that she was not telling the complete and full truth and to quote a line from the deposition. That her ass was in a lot of trouble. And I believe that it can reasonably argue to the jury and inferred by them that suddenly Teresa Freeland was confronted with this situation and was motivated to extricate herself from the trouble she was just told she was in in an attempt to try and shift the blame to others. It is also, I'm gonna make clear from my motion that I am not asking leave of Court to ever inquire of this witness or of any other witness, including the polygraph examiners, the results or their opinions as to her veracity or whether or not they believed that she was telling the truth. But I believe I should be able to inquire of this witness whether it was her perception and understanding that she was flunking a polygraph or whether she was ever told that she had flunked one. So I would respectfully request the Court to modify it's Motion In Limine to allow me to inquire into this area and interrogate specifically about the circumstances of the fact that she was attached to a lie detector and particularly with respect to her belief as to the accuracy and the information that can be gained from such device.

(STATE'S RESPONSE)

BY THE COURT: Any thing else on the offer?

BY MR. GRAY: Only a quick response your Honor. And that is I believe that Mr. Marshall is correct in citing Indiana law, however, the legal basis of my motion, my request, is the sixth amendment of the United State Constitution which guarantees my right to, my client a right to affectively confront and full affective cross examination of this witness. And I don't believe that I can get that without going into this issue. And since I'm anticipating that the Court is going to deny my Motion I would like the Court to show that my request is being offered to the Court in the form of an offer to prove at this time. I want to protect my record for appeal, your Honor.

EXCERPT FROM ROSS WRIGHT'S BRIEF OF APPELLANT WHEREIN FEDERAL QUESTION SOUGHT TO BE REVIEWED WAS RAISED

5. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY UNCONSTITUTIONALLY LIMITING ROSS WRIGHT'S CROSS EXAMINATION OF TERESA FREELAND CONCERNING THE CIRCUMSTANCES SURROUNDING HER CONFESSION, WHICH CONFESSION WAS USED AGAINST HIM.

The trial court committed reversible error by unconstitutionally limiting Ross Wright's cross examination of Teresa Freeland concerning the circumstances surrounding Teresa Freeland's confession which implicated Ross Wright. (R. 5437-5460). Teresa Freeland initially denied having any knowledge of the murder of her husband. (R. 2874-2898). She subsequently confessed, but only after she was subjected to a marathon session of polygraph examinations during which the examining officer placed extreme emotional pressure on her, she was told that she was being untruthful and deceitful, and she repeatedly cried uncontrollably. (R. 3807-3819, 5437-5438, 5445-5452, 5456-5460). Teresa Freeland confessed to her role in the murder of her husband and implicated Ross Wright (and Stanley Wright) only after, due to the actions of the officer administering the polygraph examination, she felt that the officer was trying to "pin" the murder on her. (R. 3815-3816).

The State filed a Motion in Limine, paragraph one of which prohibited mention of or inquiry about Teresa Freeland's polygraph examinations. (R. 99-101). The motion was granted by the trial court over objection and argument. (R. 8). Trial counsel for Ross Wright moved to life the Motion in Limine with respect to paragraph one during the trial, specifically citing the due process and Sixth Amendment violations caused by the operation of the order, yet this motion was denied by the trial court, which relied upon the general rule of law that polygraph evidence is inadmissible. (R. 3790-3797, 3803-3804). Ross Wright then made an offer to prove, which was denied by the trial court. (R. 3803-3805). The trial court granted Stanley Wright's offer to prove, however, and the offer was put forth. (R. 3806-3823). Within this offer to prove, Teresa Freeland testified that she entered the polygraph examination with the intent to lie, that she cried repeatedly, that the examining officer placed tremendous pressure and coerced her to confess, that she thought that the police were trying to pin the murder on her, and that after all of this, she, for the first time, confessed and implicated Ross Wright (and Stanley Wright). (R. 3806-3823). This obviously shows the coercion involved in obtaining the confession. A transcription

of the confession was admitted into evidence and passed to the jury. (R. 2874-2899 [Exh. 104]).

When a confession is offered into evidence, the Sixth Amendment of the United States Constitution assures the defendant the right to present the jury with the circumstances surrounding the confession, so that the jury may properly assess its credibility. Tyler v. U.S. (1952), 193 F.2d 24; McGee v. State (1952), ___ Ind. ___, 104 N.E.2d 726; Hicks v. State (1934), ___ Ind. ___, 11 N.E. 2d, 171. Ross Wright's Sixth Amendment Constitutional Rights were violated when he was prohibited from attacking the credibility of Teresa Freeland's confession and resulting continued claims, in the form of testimony at trial.

This precise issue was considered by the Seventh Circuit United States Court of Appeals in Tyler v. U.S., (1952), 193 F.2d 24. In that case, the defendant had given a confession after being advised that a polygraph indicated that he was lying. The trial court had admitted the statement that the polygraph indicated that the defendant was lying as it revealed the circumstances surrounding the confession, and not as proof of the truthfulness of the defendant's original statements. Though the Seventh Circuit Court of Appeals, like Indiana, generally holds polygraph evidence inadmissible, it held that the trial court had not erred and that polygraph evidence is admissible when offered to show the circumstances surrounding the confession and not to show the truthfulness of the defendant's statements.

Also, the traditional concerns of polygraph evidence were not involved here, as the statement sought to be impeached thereby was not the statement made and "tested", but that which resulted from the polygraph's coercive character on Teresa Freeland. If the officers had placed her in thumbscrews and tightened them until she cried, Ross Wright would certainly have had the right to present this to the jury for their consideration. Teresa Freeland was placed in the psychological thumbscrew of the polygraph, and refusing Ross Wright the opportunity to present this evidence to the jury violated his Due Process and Sixth Amendment rights.